

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)  
[jperry@orrick.com](mailto:jperry@orrick.com)  
MELINDA S. RIECHERT (SBN 65504)  
[mriechert@orrick.com](mailto:mriechert@orrick.com)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
1000 Marsh Road  
Menlo Park, CA 94025-1015  
Telephone: +1 650 614 7400  
Facsimile: +1 650 614 7401

KATHRYN G. MANTOAN (SBN 239649)  
[kmantoan@orrick.com](mailto:kmantoan@orrick.com)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2669  
Telephone: +1 415 773 5700  
Facsimile: +1 415 773 5759

Attorneys for Defendant  
Apple Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,  
Plaintiff,  
v.  
APPLE INC.,  
Defendant

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S  
REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF REPLY IN SUPPORT OF  
MOTION TO DISMISS PLAINTIFF'S  
THIRD AMENDED COMPLAINT**

[F.R.E. 201]

Dept: Courtroom 5, 17th Floor  
Judge: Honorable Edward M. Chen  
Date: May 16, 2024  
Time: 1:30 p.m.

1 KATE E. JUVINALL (SBN 315659)  
[kjuvinall@orrick.com](mailto:kjuvinall@orrick.com)  
2 ORRICK, HERRINGTON & SUTCLIFFE LLP  
631 Wilshire Blvd., Suite 2-C  
3 Santa Monica, CA 90401  
Telephone: +1 310 633 2800  
4 Facsimile: +1 310 633 2849

5 RYAN D. BOOMS (SBN 329430)  
[rbooms@orrick.com](mailto:rbooms@orrick.com)  
6 ORRICK, HERRINGTON & SUTCLIFFE LLP  
2100 Pennsylvania Avenue NW  
7 Washington, D.C. 20037  
Telephone: +1 202 339 8400  
8 Facsimile: +1 202 339 8500

9 Attorneys for Defendant  
Apple Inc.

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1 Pursuant to Federal Rule of Evidence 201, Defendant Apple Inc. requests that, in connection  
 2 with its Reply in Support of its Motion to Dismiss Plaintiff's Third Amended Complaint ("TAC"),  
 3 the Court take judicial notice of the following document:

4 • **Exhibit A:** Complaint, *Banko v. Apple Inc.*, N.D. Cal. No. 3:13-cv-02977-VC, Dkt. 1  
 5 (June 27, 2013).

6 "The court may judicially notice a fact that is not subject to reasonable dispute because it  
 7 ... can be accurately and readily determined from sources whose accuracy cannot reasonably be  
 8 questioned." Fed. R. Evid. 201(b)(2). It is appropriate to take judicial notice of court filings and  
 9 other matters of public record. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746  
 10 n.6 (9th Cir. 2006) (citing *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d  
 11 1360, 1364 (9th Cir. 1998)) (judicial notice of filings from other cases appropriate "[t]o determine  
 12 what issues were actually litigated"); *Fidelity Nat'l Title Ins. Co. v. Castle*, 2011 WL 5882878, at  
 13 \*4 n.4 (N.D. Cal. Nov. 23, 2011) (citation omitted) (taking judicial notice of a complaint filed in a  
 14 different case, though "not for the truth of the matter asserted in the other litigation").

15 Here, Plaintiff contends in her Opposition to Apple's Motion to Dismiss that her twelfth  
 16 claim for "Breach of Implied Contract & Breach of Covenant of Good Faith and Fair Dealing"  
 17 should not be dismissed and cites *Banko v. Apple Inc.*, 20 F. Supp. 3d 749 (N.D. Cal. 2013), where  
 18 the Court declined to dismiss the plaintiff's "Breach of Contract and Breach of Implied Covenant  
 19 of Good Faith and Fair Dealing" claim. *See* Dkt. 54 at ¶¶ 26-27. Apple requests that the Court take  
 20 notice of the complaint at issue in *Banko*, not for the truth of the allegations asserted therein, but  
 21 rather for the fact that the allegations therein were the operative allegations at issue in the motion  
 22 to dismiss in *Banko*.

23 For the foregoing reasons, Apple respectfully requests that the Court take judicial notice of  
 24 Exhibit A hereto.

25  
 26 Dated: April 16, 2024

By: \_\_\_\_\_ /s/ *Jessica R. Perry*  
 27 JESSICA R. PERRY  
 28 Attorneys for Defendant Apple Inc.